

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

KELIIHULUHULU: ALFRED SPINNEY
KANAKA-MAOLI HAWAIIAN;

Plaintiff,

vs.

NORMAN A. KEANAAINA, TUPOU VI,
SEMISI FONUA, ROBERT D.
TRANTOS, RICHARD RAMIREZ,
MICHELLE C. DICKINSON, JEAN
KEKA, FINE TEUTAU, PATRICK
KAWAI, TYLER MENO, ASA TEUTAU,
SIONE FILIKITONGA, MASTER FALAU,
SAMUELA TATOFI, HARRY KIM, RENEE
SONOBE HONG, DOE DEFENDANTS 1-
10000, MAASI TEUTAU, LEROY
COLOMBE, MAAKI TEATAU, DEANNA S.
SAKO, PAUL FERRIERA, SALESI HE-
I-LIKU TONGA,

Defendants.

CIV. NO. 19-00417 LEK-WRP

ORDER DISMISSING CASE WITH PREJUDICE

On August 5, 2019, pro se Plaintiff Alfred Spinney Keliihuluhulu ("Plaintiff") filed his "First Amended Complaint and Emergency Ex-Parte Request for Injunction Enjoining Defendants Wrongdoers from Entering upon the Easement of Royal Patent Grant 990 to Kapaiki." [Dkt. no. 5.] This document was construed as both Plaintiff's operative pleading ("Amended Complaint") and a motion for a temporary restraining order ("TRO Motion"). On September 17, 2019, an order was issued dismissing

the Amended Complaint without prejudice and denying the TRO Motion, without prejudice to the filing of a new motion after Plaintiff filed his second amended complaint ("9/17/19 Order"). [Dkt. no. 34.¹] The 9/17/19 Order gave Plaintiff until October 17, 2019 to file a second amended complaint that cured the defects identified in the 9/17/19 Order. [9/17/19 Order at 16.] Plaintiff was warned that, if he failed to file a second amended complaint by October 17, 2019, his claims would be dismissed with prejudice and the case would be closed. [Id.]

Because Plaintiff has neither filed a second amended complaint nor requested an extension of the October 17, 2019 deadline,² this Court has the discretion to dismiss the Amended Complaint with prejudice. See Yourish v. Cal. Amplifier, 191 F.3d 983, 988 (9th Cir. 1999) (holding that the plaintiff's failure to comply with a minute order setting forth the deadline to file the amended complaint gave the district court the discretion to dismiss the case under Fed. R. Civ. P. 41(b)).³

¹ The 9/17/19 Order is also available at 2019 WL 4452831.

² Plaintiff submitted a letter, dated October 16, 2019, to the Clerk of Court. However, the letter did not request an extension of Plaintiff's October 17, 2019 deadline to file his second amended complaint. [Dkt. no. 59.]

³ Fed. R. Civ. P. 41(b) states, in pertinent part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."

(. . . continued)

After weighing the five dismissal factors set forth in Dreith v. Nu Image, Inc., 648 F.3d 779, 788 (9th Cir. 2011),⁴ this Court finds that the public interest in the expeditious resolution of this litigation and this Court's interest in managing the docket strongly outweigh the policy favoring disposition of cases on the merits. Moreover, the defendants will not be prejudiced by dismissal because, although Plaintiff has made service, none of the defendants has made an appearance in this case, and there are no less drastic alternatives available at this time.

Plaintiff's Amended Complaint, which this Court previously dismissed without prejudice, is HEREBY DISMISSED WITH PREJUDICE. This Court DIRECTS the Clerk's Office to close the case on **November 15, 2019**, unless Plaintiff files a timely motion for reconsideration of this Order as provided for in the Local Rules of Practice for the United States District Court for the District of Hawaii.

⁴ The Ninth Circuit has

identified five factors that a district court must consider before dismissing a case . . . :
(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the other party; (4) the public policy favoring the disposition of cases on their merits; and
(5) the availability of less drastic sanctions.

Dreith, 648 F.3d at 788 (citations and quotation marks omitted).

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAI`I, October 25, 2019.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

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